

**TITLE 14, NATURAL RESOURCES**

**NOTICE OF PROPOSED RULEMAKING**

**ANNUAL FEE SCHEDULE**

**NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB) proposes to adopt the regulations described below after considering all comments and recommendations regarding the proposed action.

**REGULATORY ACTION**

The SMGB proposes to amend §3698 and §3699 of Article 8, California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1. These regulations clarify and make specific changes to the Annual Fee Schedule as a result of Legislative changes to Public Resources Code (PRC) §2207.

**PUBLIC HEARINGS AND WRITTEN COMMENTS**

The SMGB has not scheduled a public hearing on this proposed action; however, the SMGB will hold a hearing to receive comments if it receives a written request for a public hearing from any interested person, or his/her authorized representative, no later than 15 days before the close of the written comment period. The hearing facility will be barrier free in accordance with the Americans with Disabilities Act. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The SMGB requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

Any interested person may submit written comments relevant to the proposed regulatory action to the SMGB. The Written Comment Period closes at 4:00 P.M., June 1, 2004. The SMGB will consider only relevant comments received at the SMGB office by that time. Late submittals will not be considered.

**AUTHORITY AND REFERENCE**

The SMGB proposes to adopt the regulations that amend §3698 and §3699 to Article 8 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC §2207(d). Reference: §2207(d).

## INFORMATIVE DIGEST

The Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code § 2710 et seq.) was enacted to ensure that significant adverse impacts of mining to the environment are prevented or mitigated and public health and safety are protected. Under SMARA, surface mining operators are required to submit to their respective lead agencies (cities and counties) for approval, a plan for reclaiming mined lands as well as proof of financial assurances to ensure those mined lands are reclaimed in accordance with the approved reclamation plan. Lead agencies are responsible for ensuring their surface mining operators are in compliance with SMARA's permit and reclamation requirements. The Department of Conservation (Department) and the State Mining and Geology Board (SMGB) provide SMARA lead agency assistance and oversight.

Public Resources Code (PRC) §2207 requires the SMGB to adopt regulations, by either emergency or non-emergency processes (reference PRC §2207[d][2][B]), that impose an annual reporting fee on each active and idle surface mining operation in the State. Active and Idle surface mining operations are defined in PRC §§ 2207(f), 2714, 2727.1, and 2735, and in the California Code of Regulations (CCR) § 3501, and include operations conducted by public agencies.

PRC § 2207(d)(2)(A) requires reporting fees to be established on an equitable basis reflecting the size and type of the operation. The SMGB must consider total assessed value of the operation, total acreage disturbed, and acreage subject to the reclamation plan. The SMGB is not restricted from considering other issues such as mineral production.

On October 10, 2003, the Governor signed Senate Bill (SB) 649 (Kuehl), that made changes to PRC §2207. These changes became effective on January 1, 2004. Specifically, the approved changes affect: (a) the minimum and maximum fees that can be assessed; (b) the maximum revenue that can be generated by the fees; and, (c) new fees to be assessed on the production of gold and silver in addition to the Annual Reporting Fees. These statutory changes require amendments to affected regulations under 14CCR §3698 (Fee Calculation), and § 3699 (Low Gross Exemption).

(a) Minimum and Maximum Reporting Fee Amounts – Existing statute sets the minimum annual fee amount at \$50, and the maximum annual fee amount at \$2,000. SB 649 resets these amounts at \$100 and \$4,000, respectively. These new amounts are to be adjusted annually for the cost of living as measured by the California Consumer Price Index for all urban consumers, using the percentage change in the previous calendar year, beginning with the 2005-06 fiscal year and annually thereafter.

(b) Maximum Revenue That Can Be Generated by Annual Reporting Fees: Existing statute established the maximum revenue that could be generated from Annual Reporting Fees at one million dollars, as adjusted for the cost of living beginning with

the 1991-92 fiscal year. SB 649 resets this amount at \$3.5 million, as adjusted for the cost of living, beginning in the 2005-06 fiscal year.

(c) Annual Production Fee on Gold and Silver: SB 649 establishes a new fee imposed on the production of gold and silver mined within the State. This fee is in addition to the Annual Reporting Fee imposed on surface mines. Specifically, the statute provides that the SMGB shall collect five dollars (\$5) per (Troy) ounce of gold and ten cents (\$0.10) per (Troy) ounce of silver. Revenues collected from these sources shall be deposited into the Abandoned Mine Reclamation and Minerals Fund Subaccount, which was created within the Mine Reclamation Account.

## **POLICY STATEMENT OVERVIEW**

The proposed language in these regulations clarifies and makes specific the methods and values to be employed when establishing the annual mine reporting fees that are mandated in statute (PRC §2207). The proposed language modifies already existing regulatory language, in order to bring the existing regulations into agreement with recent legislative changes to statute (reference: Senate Bill (SB) 649 (Kuehl), October 10, 2003). This regulation is necessary in order to protect the California public and environment by providing funds to the Department of Conservation to operate its programs mandated by the Surface Mining and Reclamation Act (SMARA, Public Resources Code § 2710 et seq.). Specifically, this regulation addresses PRC § 2207.

## **CEQA COMPLIANCE**

The SMGB staff have determined that this rule making project is either not a project under Title 14, CCR § 15378 of the CEQA Guidelines, or is Categorically Exempt under Title 14, CCR § 15308 of the CEQA Guidelines.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The SMGB staff has made the following preliminary determinations:

**Mandate on local agencies and school districts:** The SMGB staff determined that adoption of this regulation does not impose any new mandates on local agencies or on local school districts.

**Costs or savings to any State agency:** The SMGB staff determined that this proposed regulation imposes no savings or additional expenses to state agencies.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630:** The SMGB staff determined this proposed regulation does not impose any additional cost obligations on local agencies or on local school districts.

**Other non-discretionary costs or savings imposed upon local agencies:** The SMGB staff determined that no other non-discretionary costs or savings to local agencies are imposed by the proposed regulations.

**Cost or savings in Federal funding to the State:** The SMGB staff determined that there are no costs or savings in Federal funding to the State.

**Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** SMGB staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language.

**Potential cost impact on private persons or directly affected businesses:** The SMGB staff is not aware of any cost impacts on private persons or directly affected businesses by the adoption of the proposed regulations. The fee changes addressed in the regulation are mandated in statute.

**Creation or elimination of jobs in California:** The SMGB staff has determined that the adoption of these regulations will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

**Significant effect on housing costs:** The SMGB staff has determined that the adoption of these regulations will have no significant effect on housing costs.

**Effects on small businesses:** SMGB staff has determined that there is no additional impact on private persons or businesses; this proposed regulation serves to clarify and make specific existing requirements contained in statute. This proposed regulation does not mandate actions upon private persons or businesses, but rather clarifies existing statute.

## **CONSIDERATION OF ALTERNATIVES**

The SMGB must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed or would be as

effective and less burdensome to affected private persons than the proposed action. SMGB staff has not identified any adverse impacts resulting from these proposed regulations.

No alternatives have been considered by the SMGB at this time that would be more effective in carrying out the purpose for which these regulatory changes are proposed, nor have any other alternatives been proposed that would be as effective and less burdensome to affected private persons, lead agencies, or small businesses.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS**

An interested person may request a copy of the proposed regulations and the Initial Statement of Reasons, or direct questions about the proposed regulations and Initial Statement of Reasons and inspect all supplemental information, upon which the regulation is based, contained in the rulemaking file. The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 A.M. and 4:00 P.M., Monday through Friday except during state holidays. Copies of the proposed regulations and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB's Internet Web Site at: <http://www.conservation.ca.gov/smgb>

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public comment period, the SMGB may adopt, as final, the proposed regulations substantially as described in this Notice and Informative Digest. Copies of these regulations, as finally adopted, will be sent to all persons on the SMGB's public comment mailing list for this issue and others requesting copies. If, as a result of public comment, substantive changes to these regulations are deemed appropriate, copies of the proposed changes will be sent to all persons who testified at the public hearing or submitted written comments during the comment period or at the public hearing, and to those who have requested copies of information regarding the regulation. Thereafter, the SMGB will accept written comments for a period of at least 15 days after the date upon which changes were made available. If adopted, the regulations will appear in CCR, Title 14, Division 2, Chapter 8, Subchapter 1, Article 8, §§ 3698 and 3699. A copy of the Final Statement of Reasons may be obtained by contacting the SMGB office as described under the section Contact Person.

## **CONFLICT WITH FEDERAL REGULATIONS**

This regulation does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the State

Mining and Geology Board, SMARA and federal law are coordinated to eliminate duplication.

## **CONTACT PERSON**

Inquiries concerning the substance of the adopted regulation should be directed to:

Ms. Kit Gonzales, Executive Assistant  
(or as a backup)  
John G. Parrish, Ph. D., Executive Officer  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814

## **INITIAL STATEMENT OF REASONS**

### **GENERAL PURPOSE AND CONDITION ADDRESSED**

This rulemaking amends §§ 3698 and 3699, California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Article 8. The proposed language in these regulations clarifies and makes specific the methods and values to be employed when establishing the annual mine reporting fees that are mandated in statute (PRC §2207). The proposed language modifies already existing regulatory language, in order to bring the existing regulations into agreement with recent legislative changes to statute (reference: Senate Bill (SB) 649 (Kuehl), October 10, 2003).

Specifically, this regulation addresses PRC § 2207.

### **SPECIFIC PURPOSE**

The proposed amended regulatory language is intended to clarify and make specific the process by which annual mine reporting fees are calculated for the purpose of funding the Department of Conservation's mandated programs under the Surface Mining and Reclamation Act (SMARA, Public Resources Code § 2710 et seq.). The specific proposed changes are reflective of recent legislative changes to statute.

#### **§ 3698. Fees Calculation.**

Public Resources Code §2207 was modified by the Legislature to provide for the annual adjustment of reporting fees using changes in the cost of living as measured by the California Consumer Price Index, commencing in the 2005-2006 fiscal year. This represents a statutory change from the previous index baseline, which was fiscal year 1991-1992. This statement is included in the regulation text to indicate that baseline figures for fees will increase by the cost of living from one fiscal year to the next, and that the baseline years has been changed.

§3698(a) – This subsection was amended to reflect an increase in the amount for multiple-site reporting mining operations to the “new” cap of \$4,000 from the previous maximum cap amount of \$2,000. This is reflective of the changes in statute that increased the maximum amount that could be assessed to \$4,000 from \$2,000. Some surface mining operations maintain more than one extraction site. Rather than pay multiple and separate annual fees for each of the extraction sites, the regulation provides for all of the multiple sites to be assessed as a single site. The \$4,000 maximum assessed fee potentially is less than the amount that would be collected if each of the separate sites were assessed individual fees. Therefore, a mine operator may avail itself of paying separate fees on each extraction site, or of filing one maximum fee for all sites combined, whichever is the lesser amount.

§3698(b)(1) – The minimum amount of the annual reporting fee is increased to \$100 from \$50. This amendment reflects legislative changes setting the minimum fee at \$100.

§3698(b)(2) – The minimum amount of the annual reporting fee is increased to \$100 from \$50. This amendment reflects legislative changes setting the minimum fee at \$100.

§3698(c) – This subsection describes the method for calculating the annual reporting fees mandated in statute. Several amendments are proposed to this subsection to bring the regulatory language into conformance with statutory changes; specifically, the proposed language addresses changes to the new minimum (\$100) and maximum (\$4,000) amount for annual fees, clarifies that fee adjustments are made from one reporting year to the next, and re-emphasizes that the statutory set fees are to be adjusted for the cost of living commencing with the 2005-2006 fiscal year.

§3698(d) – no change.

§3698(e) -- The minimum amount of the reporting fee is increased to \$100 from \$50. This amendment reflects legislative changes setting the minimum fee at \$100.

§3698(f) – This subsection is added to the existing regulation to bring the regulation into accord with new statutory mandates. This subsection provides that the Board shall collect \$5 per ounce of gold and \$0.10 per ounce of silver in addition to the existing annual reporting fees collected by the Department of Conservation, and that the fees will be based on the most recent figures from the reporting year.

§3699 – Low Gross Exemptions.

§3699(a) – no change.

§3699(a)(1) – no change.

§3699(a)(2) – no change.

§3699(a)(3) – no change.

§3699(a)(4) – This subsection is amended to reflect a change in the fee amount provided for “Low Gross Exemption” petitioners to \$400 from \$200. The fee amount is available to operators who meet specific income and operating criteria, and that the low gross amount base fee is subject to annual cost of living adjustments commencing with the 2005-2006 fiscal year.

§3699(b) – no change.

§3699(c) – no change.

## **STATEMENT OF NECESSITY**

Public Resources Code §2207 requires the Board to impose, by regulation, an annual reporting fee, and a method for collecting annual fees, from each active or idle surface mining operation. The fees are to cover the Department of Conservation's costs in implementing PRC §2207 and the Surface Mining and Reclamation Act (SMARA, Public Resources Code § 2710 et seq.). The proposed amendments to the existing regulations are the result of statutory changes approved by the State Legislature that became effective on January 1, 2004. These proposed changes are necessary to bring existing regulations into accord with current statute, and to provide funds for the Department of Conservation's mandated programs.

## **IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDY, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED**

No technical, theoretical, empirical studies, reports, or documents have been prepared or relied upon by the SMGB in its consideration of this rulemaking.

**PROPOSED REGULATION LANGUAGE:**

(Added text is underlined; deleted text is ~~struck-out~~)

§ 3698. Fees Calculation.

Annual reporting fees cited in these regulations shall be adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(a) The annual reporting fee for a multiple site surface mining operation shall be ~~two~~ four thousand dollars ~~(\$2000)- (\$4,000)~~.

(b) The annual reporting fee for surface mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) Which did not complete reclamation during the reporting calendar year shall be ~~\$50~~ \$100; or

(2) Which completed reclamation during the reporting calendar year shall be ~~\$50~~ \$100. Proof of completion of reclamation, approved by the lead agency, shall be submitted with this fee.

(c) Except as otherwise provided, the annual reporting fee for surface mining operations shall be calculated on the total primary mineral commodity produced in the reporting calendar year. A factor to determine the amount of fee adjustments from one reporting calendar year to the next shall be calculated according to the following formula:

$$[(AT_{RY}) - (AT_{PY})]/(AT_{PY}) = \text{Factor}$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from ~~fixed~~ fees set in CCR §3698 (a)(b)(d)(e) and CCR §3699, and less a projected amount from mine operations subject to the maximum fee amount of ~~\$2,000~~ \$4,000;

Where:  $AT_{RY}$  is the Adjusted Total for the current "Reporting Year"

Where:  $AT_{PY}$  is the Adjusted Total for the "Prior Year"

The new Fee Amount for each category is determined by the following formula (calculated amounts cannot be less than ~~\$50~~ \$100 or more than ~~\$2,000~~ \$4,000, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter, and may be rounded to the nearest ~~\$5~~ \$1 (~~five-dollars~~ one dollar):

Formula 1: Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor) if Factor is positive;

Formula 2: Current Year Reporting Fee = Prior Year Reporting Fee times (1 - Factor) if Factor is negative.

(1) Operations where the primary mineral commodity produced is either aggregate products or industrial minerals shall be assessed a fee as follows:

Tons	Fee in Dollars
0 - 100	Formula 1 or 2 (not less than <del>\$50</del> <u>\$100</u> )
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 50,000	Formula 1 or 2
>50,000 - 100,000	Formula 1 or 2
>100,000	<del>2,000</del> <u>4,000</u>

(2) Operations where the primary mineral commodity produced is gold, silver, or precious metals shall be assessed a fee as follows:

Ounces	Fee in Dollars
0 - 1	Formula 1 or 2 (not less than <del>\$50</del> <u>\$100</u> )
>1 - 10	Formula 1 or 2
>10 - 50	Formula 1 or 2
>50 - 150	Formula 1 or 2
>150 - 300	Formula 1 or 2
>300	<del>2,000</del> <u>4,000</u>

(3) Operations where the primary mineral commodity produced is base metals or other metals shall be assessed a fee as follows:

Pounds	Fee in Dollars
0 - 10	Formula 1 or 2 (not less than <del>\$50</del> <u>\$100</u> )
>10 - 100	Formula 1 or 2
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 20,000	Formula 1 or 2
>20,000	<del>2,000</del> <u>4,000</u>

(d) The initial reporting fee for surface mining operations shall be five hundred dollars (\$500).

(e) The annual reporting fee for newly permitted surface mining operations which have not yet begun operations shall be ~~fifty one hundred~~ fifty one hundred dollars (~~\$50~~- \$100).

(f) In addition to the annual reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state during the reporting year.

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

#### § 3699. Low Gross Exemptions.

(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and

approved reclamation plan ~~or plans~~, clearly demonstrates that the operation meets the following criteria:

(1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and

(2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than \$100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) the owner or operator has submitted an annual reporting fee of ~~two~~ four hundred dollars ~~(\$200)~~ (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(b) For any request received on or before July 1 following the reporting calendar year the Department may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the operator may appeal that determination to the Board. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairman of the Board or his designee (Board Member), shall determine whether the Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed in a timely fashion;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department's decision or grant the exemption. If the operator does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department's decision, the operator or owner shall submit an annual reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by the Department of Conservation or the Board. An operator or owner submitting an annual reporting fee later than thirty (30) days after notification shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.